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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,724	10/26/2001	Wyatt Allen Huddleston	PF02200NA/10-31	9665

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EXAMINER

AVELLINO, JOSEPH E

ART UNIT PAPER NUMBER

2143

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/045,724

Applicant(s)

HUDDLESTON ET AL.

Examiner

Joseph E. Avellino

Art Unit

2143

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: arguments presented are not persuasive, see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Applicant's arguments have been fully considered but they are not persuasive

In the remarks, Applicant argues, in substance, that (1) the term "wireless internet access device" is not merely a label to a device, rather should be given patentable weight since it is a definitive expression, (2) the Examiner's rationale for a server as a web site is incorrect, and (3) the wireless link between the remote control and the subscriber station cannot be reasonably subject to being viewed as a wireless communication network as construed by one of ordinary skill.

As to point (1) the subscriber station still reads upon the wireless internet access device, since no access to the internet is claimed. This is merely a label and is not a quantitative or definitive expression (i.e. it does not serve a purpose in the claimed invention). The examiner believes that if this limitation was amended to state that the identification of the intelligent device and the desired function of a web site wirelessly through the internet would overcome this argument since the label utilizes some functionality to the device. Applicant is reminded that limitations are not interpreted from the specification See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). By this rationale, the subscriber headend reads upon the wireless internet access device as claimed.

As to point (2) Applicant's specification does not provide for any definition of a "web site", only that it contains the control codes and can be transmitted from the website to the WIAD. Therefore Applicant intends on the web site to function solely as a data server, responding to function calls for control instructions with the appropriate data. Had the Applicant intended this data to be formatted in web pages more befitting for the definition of a web site as applicant states in the response, it would be reasonable for one of ordinary skill in the art to construe Applicant's definition of a web site, namely a collection of associated web pages or other information available via a unique address. However, since Applicant only intends the data to be transferred from the web site to the WIAD, such as the how the subscriber station transfers data to the TV remote control, it is proper to construe the "web site" as merely a server. By this rationale, the rejection is maintained.

As to point (3) As stated in the response to the previous Office Action, it is still believed that the communication link satisfies the definition of the Microsoft Dictionary. As Applicant states not to put too much weight to associate with one authority, the Office cautions the Applicant as well. The Microsoft Dictionary is a premier dictionary in the art, however Applicant merely finds a dictionary on Google (and does not specify as to which dictionary Applicant uses). The Microsoft Dictionary is utilized in the computer arts and is more in tune as to what one of ordinary skill in the art would construe as subject matter. By this rationale, the rejection is maintained. Furthermore the definition that the Applicant provides (i.e. "a network is a series of points or nodes interconnected by communication paths") is satisfied by the wireless link since it is a communication path connecting two points or nodes (i.e. the subscriber station and the remote control. By this rationale, the rejection is maintained.

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